

Senate Bill No. 390

CHAPTER 686

An act to amend Sections 13269 and 13350 of the Water Code, relating to water.

[Approved by Governor October 6, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 390, Alpert. Water quality.

(1) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are among the principal agencies with authority over water quality. Under the act, generally, persons discharging waste are required to file with the appropriate regional board a report of the discharge and the discharge is subject to waste discharge requirements prescribed by that regional board. Under the act, persons are generally prohibited from initiating a new discharge of waste, or making any material changes in any discharge of waste, prior to the filing of the waste discharge report, and after the filing of that report unless waste discharge requirements have been prescribed or, under certain circumstances, 120 days have elapsed since the filing of that report. The act authorizes the regional boards to waive these requirements as to a specific discharge or type of discharge.

This bill would authorize the regional boards, on and after January 1, 2000, to waive these requirements as to a specific discharge or type of discharge if the waiver is not against the public interest. The bill would allow waivers to be renewed but would prohibit the regional boards from issuing waivers for specific types of discharges that exceed 5 years in duration. The bill would require the regional boards and the state board to require compliance with the conditions pursuant to which waivers are granted. The bill would require the regional boards, prior to renewing any waiver for a specific type of discharge, to review the terms of the waiver policy at a public hearing, and to determine at that hearing whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements. The bill would provide that a waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. The bill would authorize a regional board to renew, in 5-year increments, waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated.

(2) The act provides that a person may be liable civilly in accordance with prescribed provisions if that person intentionally or negligently violates prescribed orders, or, in violation of prescribed requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance, or causes or permits any oil or residuary product of petroleum to be deposited in the waters of the state, except in accordance with the act.

This bill, in addition, would provide that a person may be liable civilly in accordance with those prescribed provisions if that person, in violation of a waiver condition or certification, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.

The bill would make legislative findings and declarations relating to the adequacy of fees imposed by the state board.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The State Water Resources Control Board, as directed in the Supplemental Report of the 1999 Budget Act, is to provide the Legislature with reports on a baseline needs analysis for the core regulatory program of the board.

(b) The board is to take into consideration the overall cost of the program, the time and effort required to review and approve individual waste discharge reports, and other factors necessary to properly determine the adequacy of fees assessed pursuant to Section 13260 of the Water Code.

(c) The board is to provide a preliminary report to the Legislature by April 1, 2000, and a final report by January 1, 2001.

(d) It is the intent of the Legislature that the final report includes a review of the fees currently collected and expended under Section 13260 of the Water Code.

SEC. 2. Section 13269 of the Water Code is amended to read:

13269. (a) On and after January 1, 2000, the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by a regional board as to a specific discharge or a specific type of discharge if the waiver is not against the public interest. Waivers for specific types of discharges may not exceed five years in duration, but may be renewed by a regional board. The waiver shall be conditional and may be terminated at any time by the board.

(b) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and

granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.

(c) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 shall not apply to discharge resulting from any of the following emergency activities:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(d) Subdivision (c) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (c) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.

(e) The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.

(f) Prior to renewing any waiver for a specific type of discharge established under this section, the regional boards shall review the terms of the waiver policy at a public hearing. At the hearing, a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.

SEC. 3. Section 13350 of the Water Code is amended to read:

13350. (a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board,

intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, and creates a condition of pollution or nuisance, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be liable civilly in accordance with subdivision (d), (e), or (f).

(b) (1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state where it creates a condition of pollution or nuisance, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d), (e), or (f).

(2) For purposes of this subdivision, the term “discharge” includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term “discharge” does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) When there is a discharge, and a cleanup and abatement order is issued pursuant to Section 13304, liability shall be imposed as follows:

(1) Civil liability may be administratively imposed by a regional board pursuant to Article 2.5 (commencing with Section 13323) for a violation of this section in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred

dollars (\$500), for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(2) Civil liability may be imposed by the superior court in accordance with this article and Article 6 (commencing with Section 13360) for a violation of this section in an amount which shall not exceed fifteen thousand dollars (\$15,000) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(e) When there is a discharge, and a cleanup and abatement order is not issued pursuant to Section 13304, liability shall be imposed as follows:

(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) for a violation of this section in an amount which shall not exceed ten dollars (\$10) for each gallon of waste discharged.

(2) Civil liability may be imposed by the superior court in accordance with this article and Article 6 (commencing with Section 13360) for a violation of this section in an amount which shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(f) When there is no discharge, but an order issued by the regional board is violated, liability shall be imposed as follows:

(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) for a violation of this section in an amount which shall not exceed one thousand dollars (\$1,000), but shall not be less than one hundred dollars (\$100), for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with this article and Article 6 (commencing with Section 13360) for a violation of this section in an amount which shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(g) A regional board shall not administratively impose civil liability in accordance with subdivision (d), (e), or (f) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based on the specific factors required to be considered pursuant to Section 13327.

(h) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining such amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the

violation occurs, and corrective action, if any, taken by the discharger.

(i) The provisions of Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) of this chapter shall apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(j) Any person who incurs any liability established under this section shall be entitled to contribution for such liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(k) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal; provided that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(l) The state board shall submit an annual report to the Legislature which shall be available to the public, list all instances in which civil liability has been administratively imposed by a regional board in accordance with subdivision (d), (e), or (f) during the preceding year, and set forth the express findings made by the regional board pursuant to subdivision (g), and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance.

